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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-152
Telecommunications Act of 1996:	)	
	)	
Telemessaging,	)	
Electronic Publishing, and	)	
Alarm Monitoring Services	)	
	)	

COMMENTS OF PACIFIC TELESIS GROUP

MARLIN D. ARD
LUCILLE M. MATES
PATRICIA L. C. MAHONEY
JEFFREY B. THOMAS

140 New Montgomery Street, Rm. 1529
San Francisco, California 94105
(415) 542-7661

Attorneys for PACIFIC TELESIS GROUP

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SUMMARY

Telemessaging and electronic publishing are competitive markets that provide valuable public services. The 1996 Act seeks to preserve and enhance these markets.

The existing, structurally integrated BOC voice mail offerings efficiently serve millions of customers without improper discrimination or cross-subsidy under the Commission's current *Computer III* safeguards. Congress did not intend to impose any new or additional substantive regulations on telemessaging, but merely to provide for expedited consideration of any complaints that might arise.

Electronic publishing thrives on the Internet, but long-term profitability for mass market services remains elusive. Congress sought to empower BOC separated affiliates and joint ventures to provide electronic publishing, subject to carefully delineated structural safeguards, as well as BOC participation in electronic publishing via teaming and other business arrangements. It surely did not ask the Commission to hobble the BOCs with more requirements than it found necessary, through unjustified expansion of the phrase "operated independently," over-reading the separate employees provision, or by any other rationale.

We urge the Commission to clarify -- not magnify -- our responsibilities under Sections 260 and 274, by adopting the following principles.

- Control of information or a legally protected intellectual property financial interest is a necessary characteristic of an electronic publishing service. Without these and other characteristics set forth in

Section 274, an information service would not be subject to the more stringent requirements of Section 274.

- BOCs and their affiliates may engage in electronic publishing that is not disseminated by means of the BOC's basic telephone service, and may disseminate electronic publishing via the services of a competing wireline carrier that resells BOC services or uses BOC unbundled elements.
- BOCs may use their own employees to engage in permissible joint activities with electronic publishers.
- BOCs and separated affiliates may share the use of, or jointly lease, property.
- BOCs may purchase, install, and maintain transmission and other equipment for a separated affiliate pursuant to provision of telephone service by tariff or contract.
- BOCs may perform any R&D, even if potentially useful to a separated affiliate, if not specifically on behalf of the separated affiliate.
- BOCs may combine activities governed by §§272 and 274 into a single affiliate if the entity satisfies the common separation requirements of both sections and applies the unique requirements to the appropriate activity.
- BOCs may make reasonable differentiations in providing inbound telemarketing service for electronic publishers.
- BOCs may engage in any sort of business arrangement with an

electronic publisher as long as the BOC itself does not provide electronic publishing content but helps others to do so and does not discriminate in how it provides its facilities, services, and information.

- BOCs are free to exercise their own business discretion about participation in joint ventures, although they may not by contract agree that they will not enter joint ventures with other entities.
- BOCs may continue to offer reasonable units or groups of services (such as DS0, DS1, DS3, and DS3x3) to electronic publishers.

Finally, there is no legal or policy justification to shift the burden of proof to BOCs in complaint proceedings regarding electronic publishing or telemessaging. This would violate the APA, and is unnecessary to give complainants an adequate remedy. Such complaint proceedings should be governed by the same evidentiary standards as apply in other cases.

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COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group ("PTG") hereby respectfully submits these Comments in the above-captioned proceeding.

I. Introduction (¶1-18)

In the Notice of Proposed Rulemaking ("*NPRM*"), the Commission acknowledges that the intent of the Telecommunications Act of 1996 is "to provide for a pro-competitive, *de-regulatory* national policy framework . . ."[1] and to "eliminate or modify artificial barriers to competition."[2] Although the focus of this rulemaking is on the safeguards and requirements that Congress established, we urge the Commission to keep in mind that the ultimate goal of the Act—the clear and unequivocal public policy—

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). *NPRM* ¶1 (*quoting* Conference Report) (emphasis added).
[2] *NPRM* ¶1.

is competition, not regulation. Where the Act is clear on the extent of regulation, the Commission should not impose additional or more onerous requirements. Where there are ambiguities in the Act, they should be resolved in favor of less regulation and more competition.

For the most part, §§260, 274, and 275 are crystal clear. The language is precise and detailed. In some instances, Congress wanted additional or different safeguards than those previously in place; in others, more flexibility and freedom. Unlike the unprecedented case of BOC provision of in-region, interLATA services—where Congress relied extensively on the FCC to make rules—the regulation of electronic publishing, telemessaging, and alarm services is mature.[3] The Commission, before the Act, had developed a comprehensive system of rules for BOC participation in those businesses. Congress built upon and refined the Commission's work. With only a few isolated exceptions, Congress did not ask for further rulemaking. It balanced all the interests and "occupied the field." One need only compare §§260, 274, and 275 (as well as 272) to see that Congress made precise choices among the various possible types of separations and other requirements that would apply to each activity, and unambiguously omitted numerous additional burdens on the BOCs that existed in prior rules or had been proposed by various industry segments. This custom tailoring differentiates among

[3] Electronic publishing represents a special case. Although this business has attracted a vast number of participants, particularly since the explosion of Internet usage, long-term profits remain elusive. The Commission should be particularly sensitive to Congress's desire to foster flexible participation in electronic publishing by the BOCs, through Internet access ("gateways"), and various forms of joint ventures and joint marketing. A heavy regulatory hand could stifle these promising arrangements.

electronic publishing, telemessaging, alarm services, and information services with respect to geographic market, corporate structure, degree of separation, permissible interactions between affiliates, and the mechanisms for monitoring and enforcing compliance. The differences represent Congress's judgment of what is necessary to make each business more competitive. The Commission should not disturb that judgment.

It is a matter of some concern that the Commission characterizes its goal in this rulemaking as "to *establish* non-accounting separate affiliate and nondiscrimination safeguards." *NPRM* ¶7 (emphasis added). In reality, Congress has already established safeguards. Sections 260, 274, and 275 are self-effecting. They are law; the BOCs must obey them; no Commission action is necessary to "establish" them.

There are a few subsections, as detailed below, where the Act's language can be subject to different interpretations, or where the application of the Act in specific factual situations is unclear. In these cases it is appropriate for the Commission to provide guidance to the industries so that business arrangements can be made without undue risk of future liability. We indicate below our views on how these issues should be resolved in a way that is most compatible with Congress's pro-competitive goals.[4]

[4] The Comments Of Joint Parties being filed by Bell Atlantic and the Newspaper Association of America today in this proceeding are consistent with this approach. We support the principles set forth in those Joint Comments.

II. The Scope Of The Commission's Authority Is Limited By The 1996 Act (¶¶19-27)

A. The Commission's Authority Should Be Limited To Enforcing The Existing Non-Structural Telemessaging Safeguards (¶¶19-21)

The Commission's authority regarding telemessaging under §260 is clear. Section 260(a) consists of straightforward directives against cross-subsidy and discrimination. The Commission's existing non-structural safeguards effectively address these concerns, as nearly a decade of experience attests. If Congress had wanted more or different regulations it would have so indicated. Also, if Congress had wanted to sweep telemessaging into the very different structural regulatory scheme Congress established for interLATA information services it would not have needed a separate section 260.[5] Thus, the Commission's authority under section 260 is not intended to result in further rulemakings. It should be limited to acting on complaints regarding §260(a) pursuant to §260(b).

B. The Commission's Limited Authority Over Electronic Publishing Services Relates Only To Dissemination By A BOC's "Basic Telephone Service" (¶¶22-25)

The purpose of §274 is to establish effective safeguards that will allow pro-competitive BOC participation in electronic publishing markets, through a separated affiliate or joint ventures and other business arrangements. Section 274 does not give the

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[5] *See* PTG Comments in CC Docket No. 96-149, 15-17 (Aug. 15, 1996).

FCC comprehensive authority to regulate any aspect of electronic publishing. The FCC's authority is limited to:

- receiving BOC filings;[6]
- prescribing regulations to value BOC asset transfers;[7]
- authorizing BOC majority interests in joint ventures with small, local electronic publishers;[8] and
- acting on complaints and applications for cease and desist orders.[9]

Moreover, this limited role for the Commission does not apply to all electronic publishing, but only to a BOC's or affiliate's provision of electronic publishing that is disseminated by means of the BOC's "basic telephone service."[10] Basic telephone service, as defined in the 1996 Act, consists of the BOC's wireline telephone exchange service and facilities provided in a telephone exchange area and does not include a competitive service that a BOC may offer in another BOC's traditional region, nor does it include wireless service (CMRS).[11]

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[6] §274(b)(3)(B) (tariffs and contracts); §274(b)(9) (compliance review reports); §274(f) (annual reports).
[7] §274(b)(4).
[8] §274(c)(2)(C).
[9] §274(e).
[10] §274(a).
[11] §274(i)(2).

III. The Commission Should Not Upset The Balance Established By Congress In Section 274 Between Protecting Ratepayers And Competition And Encouraging Expansion Of New Electronic Publishing Services (¶¶28-67)

A. Inherent In The Definition of Electronic Publishing Is Control Or A Financial Interest In The Content Of Information (¶31)

The Commission requests comments on the types of "services that are included in the definition of electronic publishing in section 274(h)(1) and those services that are excluded under 274(h)(2)." *NPRM*, para. 31.

The MFJ's definition of electronic publishing services was limited to services for which the carrier controls, or has a financial interest in, the content of information transmitted by the service. Congress, however, deliberately did not adopt the MFJ definition of electronic publishing (which applied only to AT&T, and not to the BOCs).[12] This omission is evidence that Congress wanted to establish a more specific and detailed set of criteria for what constituted electronic publishing, rather than use the more open-ended MFJ definition.

Nonetheless, the financial interest and control criteria are useful to exclude services from the electronic publishing definition, although not to include them. For instance, directory assistance could not be included as an electronic publishing service, on this or any other basis, because §274(h)(2)(I) contains an express exception for directory assistance.[13] Most of the other exceptions listed in §274(h)(2), however, such as gateways, messaging services, and transmission services, clarify and reinforce the general

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[12] *See, e.g.*, S. 1822, section 233(p)(6)(A), 103d Cong, 2d Sess, S. Rpt. 103-367, which included the MFJ definition.

[13] This exception is consistent with the historic MFJ exception and the FCC's determination that such services are "adjunct to basic" because their purpose is to facilitate the placement of basic telephone calls.

principle that control or a financial interest is implicit in the terms "dissemination, provision, publication, or sale" of information of the types included in the definition of electronic publishing services. Therefore, control or a financial interest is necessary, though insufficient by itself, to make an information service an electronic publishing service and is usually the defining factor between the general definition and the exceptions. Moreover, the exceptions make it clear that the "financial interest" involved must be a legally protected intellectual property interest in the content, not merely a financial interest in transporting the information for subscribers. Therefore, electronic publishing services must not only meet the definition of "information service" and not be expressly excluded, but also must include this additional control or financial interest qualification with regard to the types of information listed in the "electronic publishing" definition ("news...entertainment...or other like or similar information"). The expansion of Internet services has made this intellectual property interest qualification especially important. For instance, to the extent that copyright laws continue to allow Internet access and other providers to promote information without having control of, or a financial interest in, the information, such "provision" of service cannot be classified as electronic publishing. Finally, to be an electronic publishing service subject to the restrictions of §274, the service must be disseminated over the BOC's, or its affiliate's, "basic telephone service." Use of the BOC's unbundled network elements in a service provided by another carrier is insufficient.

B. The FCC Should Apply "Separated Affiliate" And "Electronic Publishing Joint Venture" Requirements In the Manner Prescribed By Congress (¶¶32-48)

1. Section 274's Restrictions Apply Only When The Electronic Publishing Services Are Disseminated Using The BOC's Basic Telephone Services (¶32)

The Commission seeks comment on its tentative conclusion that "a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a 'separated affiliate' or an 'electronic publishing joint venture.'" *NPRM*, para. 32. We concur with this tentative conclusion, and suggest that, for the sake of clarity, the Commission also conclude the corollary, *i.e.*, that a BOC or BOC affiliate may engage in any electronic publishing that is not disseminated by means of the BOC's or any of its affiliates' basic telephone service, and need not do so through a separated affiliate or electronic publishing joint venture. Thus, for example, a BOC or BOC affiliate may engage in the provision of an electronic publishing service disseminated by means of telephone exchange service or facilities provided by a competitive wireline telephone service provider. This is true even if the competing service provider provides its services through resale of the BOC's services or use of unbundled network elements obtained from the BOC. So long as the BOC or BOC affiliate goes to a third party, *e.g.*, a competing wireline telephone service provider, to obtain facilities or services to disseminate the electronic publishing service, such activity is permitted by §274(a) without the need to create a separated affiliate or joint venture.

2. Structural Separation And Transactional Requirements Should Not Be Expanded (¶¶35-46)

a. The "Operate Independently" Provision Does Not Require The Imposition Of Additional Requirements (¶35)

The Commission seeks comment on whether any additional regulatory requirements are necessary to ensure compliance with §274(b)'s requirement that a separated affiliate or electronic publishing joint venture be operated independently from the BOC, and whether that requirement has a different meaning for separated affiliates and electronic publishing joint ventures. *NPRM*, para. 35.

The phrase "operated independently" does not require or invite any further substantive requirements. Rather, it should be viewed as providing a "gloss" for the requirements specified in §274(b). Here, where it is stated in the lead-in sentence prior to enumerating specific requirements, even more than in §272, it is clear that this requirement indicates the purpose of the specifically enumerated requirements and provides guidance in the implementation and interpretation of those specific requirements. Furthermore, there is no suggestion that Congress intended the phrase "operated independently" to apply differently to separated affiliates and electronic publishing joint ventures, except to the extent Congress specified differences. Section 274(b) includes some requirements that apply to both separated affiliates and electronic publishing joint ventures, and some that apply only to separated affiliates. Congress stated which applied in each circumstance. The Commission should not seek to create differences where Congress did not find differences to be necessary.

The Commission should not add to or modify that which Congress has

prescribed. Congress showed very clearly that it gave careful thought to the requirements for the many situations addressed in the 1996 Act, and prescribed the requirements it believed necessary in each situation. Congress did not invite or authorize the Commission to create additional requirements relating to electronic publishing.

b. Section 274(b)(5) Applies Only With Respect To Separated Affiliates And Should Not Be Modified By Adding Requirements Not Imposed By Congress (¶¶39-42)

Section 274(b)(5) includes two limitations that apply "between a separated affiliate and a [BOC]." It states that they may "have no officers, directors, and employees in common" and may "own no property in common." The Commission tentatively concludes that this section does not apply between BOCs and electronic publishing joint ventures, and that those entities may therefore have officers, directors, and employees in common. *NPRM*, para. 39. We agree with that tentative conclusion. The explicit language of §274(b)(5) permits no other conclusion.

The Commission seeks comment on the extent of the separation required by §274(b)(5)(A), specifically with reference to the joint marketing permitted under §274(c)(2), and whether those provisions can be harmonized. *NPRM*, para. 40. The extent of the required separation is exactly what is stated -- the separated affiliate and the BOC may not have officers, directors, and employees in common. No other restrictions should be "piggy-backed" onto this straightforward requirement. Sections 274(b)(5)(A) and 271(c)(2) can easily be harmonized. It is not necessary for a BOC and a separated affiliate to have "officers, directors, and employees in common" to engage in the permissible joint marketing activities described in §274(c)(2). Just as with third party electronic publishers with which

the BOC will engage in joint marketing activities, as permitted and required by §274(c)(2), the BOC and separated affiliate will determine what permissible activities they wish to pursue, and each will use its own employees to engage in those activities. This does not create employees in common. The Commission should not attempt to broaden the §274(b)(5)(A) limitation to prevent the permissible activities allowed by other parts of §274.

The Commission also seeks comment on whether the prohibition of common ownership of property between a BOC and a separated affiliate permits other types of sharing of property between a BOC and a separated affiliate, *e.g.*, sharing of use or jointly leasing property. *NPRM,* para. 42. Section 274(b)(5)(B) prohibits common ownership -- it does not prohibit anything else. Congress showed time and again in the 1996 Act that it knew how to, and did, prescribe those requirements and limitations that it deemed necessary. It did not prescribe any limitation on such things as shared use or leases of property, and the Commission should not impose what Congress did not require. Any concerns that might arise from such sharing are addressed by the requirements of §274(b)(3) regarding transactions between BOCs on one hand and separated affiliates and electronic publishing joint ventures on the other. Additional protection is provided by the Commission's accounting safeguards as they currently exist and as the Commission may order for a BOC's interactions with an electronic publishing separated affiliate or joint venture.[14]

c. Section 274(b)(7) Applies Only With Respect To Separated Affiliates And Should Not Be Modified By Adding Requirements Not Imposed By Congress (¶¶44-46)

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[14] *See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996,* CC Docket No. 96-150, *Notice of Proposed Rulemaking,* Released July 18, 1996.

Section 274(b)(7), like §274(b)(5), imposes certain limitations on BOCs with respect to separated affiliates. Electronic publishing joint ventures are not mentioned in §274(b)(7). Pacific agrees with the Commission's tentative conclusion that a BOC may perform the activities listed (*i.e.*, hiring and training of personnel, purchasing, installation, and maintenance of equipment, and research and development) on behalf of electronic publishing joint ventures. *NPRM,* para. 44.

The Commission seeks comment on whether §274(b)(7)(B) would permit a BOC to purchase, install, and maintain transmission equipment for a separated affiliate if the BOC is providing telephone service to the separated affiliate under tariff or contract. *NPRM*, para. 45. Section 274(b)(7)(B) prohibits a BOC from providing purchasing, installation, or maintenance of equipment to a separate affiliate "except for telephone service that it provides under tariff or contract subject to the provisions of this section." If the provision of such telephone service pursuant to a tariff or contract includes the purchasing, installation, or maintenance of transmission equipment, or any other equipment, the explicit language of §274(b)(7)(B) would permit the BOC to provide the associated purchasing, installation, and maintenance of the equipment to separated affiliates.

The Commission also seeks comment on the meaning of the prohibition on the performance of "research and development on behalf of a separated affiliate." *NPRM,* para. 46. The Commission's suggestion that this limitation would apply to "any research and development that may potentially be of use to a separated affiliate" is extremely broad, is anticompetitive, actually harms the BOC, and is therefore completely inappropriate. That definition of the prohibited research and development could encompass almost any research and development a BOC might do on its own behalf or on behalf of its other affiliates.

Section 274(b)(7)(C) is not a general prohibition on the performance of research and development by a BOC. The BOC may perform any research and development otherwise permitted, so long as it does not do so "on behalf of" a separated affiliate. Furthermore, nothing in §274 prohibits the BOC from sharing research and development with a separated affiliate, so long as that research and development was not done "on behalf of" the separated affiliate, and so long as any such sharing is done consistent with the requirements of §274(b)(3) and the Part 64 affiliate transactions rules.[15]

3. Activities Subject To §§272 And 274 Can Be Combined In A Single Entity And Each Section Will Apply To The Activities It Governs (¶¶47-48)

The Commission seeks comment on the interrelationship between the requirement for separated affiliates and electronic publishing joint ventures in §274(b) and the requirement for separate affiliates in §272(b). *NPRM*, para. 47. The interrelationship is simply that, to the extent there are similarities in the requirements specified in §§272(b) and 274(b), those similar requirements should be interpreted consistently. This is the most reasonable interpretation, and will be the most efficient for the BOCs and the Commission to implement and enforce.

The Commission also seeks comment on the extent to which a BOC may combine the activities governed by §272 with the activities governed by §274 into a single separated affiliate, and if it does, whether it would be required to comply with the requirements of §272, §274, or both. *NPRM*, para. 48. Nothing in either §272 or §274 or elsewhere in the 1996 Act suggests that a BOC could not combine all activities governed by §§272 and 274 into a single entity, so long as that entity satisfies the common

[15] 47 C.F.R. §64.902.

separation requirements of both §§272 and 274. The unique requirements of §§272 and 274 would apply only to the activities specified in each of those sections. For example, since §§272 and 274 both require books, records, and accounts separate from the BOC, that requirement would apply to the entire entity. But since §272 does not include a prohibition on hiring and training of personnel, the limitation on BOC hiring and training of personnel would apply only with respect to the entity's electronic publishing activities. Nothing in the 1996 Act precludes a BOC and its affiliates from organizing in this manner, and the Commission should not impose organizational structures not required by Congress.

C. *The FCC Should Respect Congress's Careful Balance Between Permissible And Impermissible BOC Joint Marketing (¶¶55-63)*

The Commission seeks comments on the joint marketing activities that Congress proscribed and on whether the joint marketing provisions in §272(g) and the CPNI provisions in §222 affect implementation of §274. *NPRM*, para. 53. Congress has proscribed specific activities in §274(c)(1). Other sections of the 1996 Act do not affect these proscriptions. If Congress had wanted provisions in §§272 or 222 to be included in §274 it would have included them in §274.

1. As Part Of Permissible Joint Telemarketing, BOCs May Refer Customers To A Separate Affiliate Or Joint Venture So Long As BOCs Avoid Unreasonable Discrimination (¶55)

The Commission seeks comments on §274(c)(2)(A), which allows BOCs to provide "inbound telemarketing or referral services." *NPRM*, para. 55. The House Report makes it clear that the permission to do joint telemarketing includes, among other things, permission for the BOC to refer a customer who requests information regarding an electronic publishing service to its affiliate or joint venture.[16] The requirement "that such services be made available to all electronic publishers on request, on nondiscriminatory terms" means that the terms of the service must be generally available to all similarly situated electronic publishers. There is no requirement that they all take the same terms; the BOC can make various options generally available. Like §202(a), this section allows reasonable discrimination. Congress's choice of this terminology shows its intent that the House Report's language of "same terms, conditions, and prices" be interpreted the same way in order to allow reasonable approaches. For instance, in order to manage limited resources, a BOC might charge the same fee to all requesting electronic publishers, including the BOC's separated affiliate, in order to get into a lottery which would determine the company or companies for which the BOC would provide these services for a set time period. The key factor is that the BOC treat similarly situated entities the same way.

[16] Joint Explanatory Statement Of The Committee Of Conference, p. 155.

2. BOC Teaming Or Business Arrangements Can Be Broad And Flexible So Long As §274(c)(2)(B) Requirements Are Met (¶¶56-57)

The Commission seeks comments on the types of arrangements that are encompassed by the terms "teaming or business arrangements." *NPRM*, para. 56. The term "teaming arrangement" is very broad, and the term "business arrangements" is even broader. The Ninth Circuit has pointed out that, in a common type of teaming arrangement, "two or more private contractors pool their financial and technological resources to work on a project they would be unable to handle alone."[17] Rules for "contractor team arrangements" are set forth in 48 CFR 9.6, which explain that these arrangements may be desirable in order "to enable the companies involved to...complement each other's unique capabilities and offer...the best combination of performance, cost, and delivery for the system or product being acquired."[18] One approach to a teaming arrangement could be for the BOC and the teaming entity to provide joint presentations to customers. The BOC could provide the part of the presentation on network services and the electronic publisher the part on electronic publishing, with two separate agreements formed, or one joint agreement.

As broad and flexible as teaming arrangements are, Congress ensured that the relief provided by §274(c)(2)(B) was not limited in any way through use of that term, by also including "business arrangements." This section permits a BOC to participate in any type of business arrangement to engage in electronic publishing so long as the BOC complies with the conditions set forth in this section. This broad flexibility is sound

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[17] *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, n.1 (9th Cir., 1983).

[18] 48 CFR 9.602(a).

public policy and reflects Congress's intent to encourage expansion of electronic publishing services to consumers by allowing the BOCs' resources to be utilized in innovative joint activities, rather than tying the hands of this large segment of the industry.

Section 274(c)(2)(B) states that a BOC may engage in nondiscriminatory teaming or business arrangements if the BOC "only provides facilities, services, and basic telephone service information as authorized by this section." This language includes any activity other than the provision of electronic publishing itself. The language is so broad that it includes promotion, marketing, sales, or advertising, in addition to other activities. It is reasonable that Congress did not find it necessary or advisable to list these activities for teaming or business arrangements, since the terms are as broad as Congress could make them, and it reasonably would not want to limit them to a finite list. For the narrower joint ventures exception, it is reasonable that Congress did list these activities, because one might otherwise be uncertain of what activities were and were not allowed. Because of the broad and flexible interrelationship that will exist between the BOC's and the electronic publisher's services in teaming or business arrangements, they both should be allowed to be involved in selling the total service in whatever manner is most efficient and productive, so long as actual provision of electronic publishing content is limited to the electronic publisher, and the BOC meets the other requirements of §274.

Teaming arrangements are included under the heading of "Joint Marketing" provisions because these arrangements are one of the three categories of exceptions listed under that heading. Teaming arrangements allow joint marketing and other activities under certain conditions. The heading does not in any way limit what is

allowed by the wording of the section. The heading is not law. Moreover, "joint marketing" is not a defined term and, thus, cannot limit the statutory provisions. The detailed statutory wording of the section is the law. The statutory wording allows the BOC to provide "facilities, services, and basic telephone service information, as authorized by this section" -- that is, so long as the BOC does not actually provide the electronic publishing content itself, but instead helps others do so, and the BOC meets the nondiscrimination requirement.

The nondiscrimination requirement for teaming and other business arrangements relates to how the BOC provides "facilities, services, and basic services information" to electronic publishers. It does not relate to the BOC's choice of teaming partners. Even if it did, BOCs would have the right to team with only those electronic publishers who meet the BOCs' reasonable standards. The BOCs cannot be expected to somehow team with every electronic publisher that may want to form such an arrangement. No regulations are necessary to ensure that the BOCs' teaming arrangements are "nondiscriminatory." For the BOCs' provision of telecommunications services, §202 provides any needed protection. If teaming is with the separated affiliate, the requirements of §274(b) provide extensive protection, including carrying out transactions via written contracts or tariffs that will be filed with the Commission and made publicly available.

Finally, the Commission asks how the BOCs' provision of "basic telephone service information" under §274(c)(2)(B) on teaming arrangements relates to the requirements in §222 for access to and use of CPNI. *NPRM*, para. 57. Section 222 governs access to CPNI, and its requirements are not affected by §274. Section